

**Introduced by Senator Ducheny**

February 19, 2010

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An act to amend Sections 13385 and 13385.1 of the Water Code, relating to water quality.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1284, as introduced, Ducheny. Water quality: mandatory minimum civil penalties.

(1) Under existing law, the State Water Resources Control Board and the California regional water quality control boards prescribe waste discharge requirements in accordance with the federal Clean Water Act and the Porter-Cologne Water Quality Control Act (state act). The state act, with certain exceptions, imposes a mandatory minimum penalty of \$3,000 for each serious waste discharge violation or for certain other described violations if those violations occur 4 or more times in any period of 6 consecutive months, as prescribed. Civil liability may be imposed administratively by the state board or a regional board or those boards may request the Attorney General to petition the superior court to impose the liability.

This bill would provide that certain violations involving the failure to file a discharge monitoring report are not subject to those mandatory minimum penalties if certain requirements are met.

(2) The state act includes within the exceptions to the imposition of those mandatory minimum penalties a violation of an effluent limitation if the waste discharge complies with a certain time schedule order and other requirements are met. The act prohibits, for the purposes of that exception, a time schedule order from exceeding 5 years in length, except as otherwise provided.

This bill, for the purposes of that exception, would instead prohibit that the time schedule order from exceeding 10 years in length. The bill would also revise the term “publicly-owned treatment work serving a small community” for purpose for these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 13385 of the Water Code is amended to  
2     read:  
3     13385. (a) Any person who violates any of the following shall  
4     be liable civilly in accordance with this section:  
5     (1) Section 13375 or 13376.  
6     (2) Any waste discharge requirements or dredged or fill material  
7     permit issued pursuant to this chapter or any water quality  
8     certification issued pursuant to Section 13160.  
9     (3) Any requirements established pursuant to Section 13383.  
10    (4) Any order or prohibition issued pursuant to Section 13243  
11    or Article 1 (commencing with Section 13300) of Chapter 5, if the  
12    activity subject to the order or prohibition is subject to regulation  
13    under this chapter.  
14    (5) Any requirements of Section 301, 302, 306, 307, 308, 318,  
15    401, or 405 of the Clean Water Act, as amended.  
16    (6) Any requirement imposed in a pretreatment program  
17    approved pursuant to waste discharge requirements issued under  
18    Section 13377 or approved pursuant to a permit issued by the  
19    administrator.  
20    (b) Civil liability may be imposed by the superior court in an  
21    amount not to exceed the sum of both of the following:  
22    (1) Twenty-five thousand dollars (\$25,000) for each day in  
23    which the violation occurs.  
24    (2) Where there is a discharge, any portion of which is not  
25    susceptible to cleanup or is not cleaned up, and the volume  
26    discharged but not cleaned up exceeds 1,000 gallons, an additional  
27    liability not to exceed twenty-five dollars (\$25) multiplied by the  
28    number of gallons by which the volume discharged but not cleaned  
29    up exceeds 1,000 gallons.  
30    The Attorney General, upon request of a regional board or the  
31    state board, shall petition the superior court to impose the liability.

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

(d) For purposes of subdivisions (b) and (c), “discharge” includes any discharge to navigable waters of the United States, any introduction of pollutants into a publicly owned treatment works, or any use or disposal of sewage sludge.

(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

(f) (1) Except as provided in paragraph (2), for the purposes of this section, a single operational upset that leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(2) (A) For the purposes of subdivisions (h) and (i), a single operational upset in a wastewater treatment unit that treats wastewater using a biological treatment process shall be treated as a single violation, even if the operational upset results in violations of more than one effluent limitation and the violations continue for a period of more than one day, if all of the following apply:

- 1 (i) The discharger demonstrates all of the following:
- 2 (I) The upset was not caused by wastewater treatment operator
- 3 error and was not due to discharger negligence.
- 4 (II) But for the operational upset of the biological treatment
- 5 process, the violations would not have occurred nor would they
- 6 have continued for more than one day.
- 7 (III) The discharger carried out all reasonable and immediately
- 8 feasible actions to reduce noncompliance with the applicable
- 9 effluent limitations.
- 10 (ii) The discharger is implementing an approved pretreatment
- 11 program, if so required by federal or state law.
- 12 (B) Subparagraph (A) only applies to violations that occur
- 13 during a period for which the regional board has determined that
- 14 violations are unavoidable, but in no case may that period exceed
- 15 30 days.
- 16 (g) Remedies under this section are in addition to, and do not
- 17 supersede or limit, any other remedies, civil or criminal, except
- 18 that no liability shall be recoverable under Section 13261, 13265,
- 19 13268, or 13350 for violations for which liability is recovered
- 20 under this section.
- 21 (h) (1) Notwithstanding any other provision of this division,
- 22 and except as provided in subdivisions (j), (k), and (l), a mandatory
- 23 minimum penalty of three thousand dollars (\$3,000) shall be
- 24 assessed for each serious violation.
- 25 (2) For the purposes of this section, a “serious violation” means
- 26 any waste discharge that violates the effluent limitations contained
- 27 in the applicable waste discharge requirements for a Group II
- 28 pollutant, as specified in Appendix A to Section 123.45 of Title
- 29 40 of the Code of Federal Regulations, by 20 percent or more or
- 30 for a Group I pollutant, as specified in Appendix A to Section
- 31 123.45 of Title 40 of the Code of Federal Regulations, by 40
- 32 percent or more.
- 33 (i) (1) Notwithstanding any other provision of this division,
- 34 and except as provided in subdivisions (j), (k), and (l), a mandatory
- 35 minimum penalty of three thousand dollars (\$3,000) shall be
- 36 assessed for each violation whenever the person does any of the
- 37 following four or more times in any period of six consecutive
- 38 months, except that the requirement to assess the mandatory
- 39 minimum penalty shall not be applicable to the first three
- 40 violations:

1 (A) Violates a waste discharge requirement effluent limitation.

2 (B) Fails to file a report pursuant to Section 13260.

3 (C) Files an incomplete report pursuant to Section 13260.

4 (D) Violates a toxicity effluent limitation contained in the  
5 applicable waste discharge requirements where the waste discharge  
6 requirements do not contain pollutant-specific effluent limitations  
7 for toxic pollutants.

8 (2) For the purposes of this section, a “period of six consecutive  
9 months” means the period commencing on the date that one of the  
10 violations described in this subdivision occurs and ending 180  
11 days after that date.

12 (j) Subdivisions (h) and (i) do not apply to any of the following:

13 (1) A violation caused by one or any combination of the  
14 following:

15 (A) An act of war.

16 (B) An unanticipated, grave natural disaster or other natural  
17 phenomenon of an exceptional, inevitable, and irresistible  
18 character, the effects of which could not have been prevented or  
19 avoided by the exercise of due care or foresight.

20 (C) An intentional act of a third party, the effects of which could  
21 not have been prevented or avoided by the exercise of due care or  
22 foresight.

23 (D) (i) The operation of a new or reconstructed wastewater  
24 treatment unit during a defined period of adjusting or testing, not  
25 to exceed 90 days for a wastewater treatment unit that relies on a  
26 biological treatment process and not to exceed 30 days for any  
27 other wastewater treatment unit, if all of the following requirements  
28 are met:

29 (I) The discharger has submitted to the regional board, at least  
30 30 days in advance of the operation, an operations plan that  
31 describes the actions the discharger will take during the period of  
32 adjusting and testing, including steps to prevent violations and  
33 identifies the shortest reasonable time required for the period of  
34 adjusting and testing, not to exceed 90 days for a wastewater  
35 treatment unit that relies on a biological treatment process and not  
36 to exceed 30 days for any other wastewater treatment unit.

37 (II) The regional board has not objected in writing to the  
38 operations plan.

39 (III) The discharger demonstrates that the violations resulted  
40 from the operation of the new or reconstructed wastewater

1 treatment unit and that the violations could not have reasonably  
2 been avoided.

3 (IV) The discharger demonstrates compliance with the  
4 operations plan.

5 (V) In the case of a reconstructed wastewater treatment unit,  
6 the unit relies on a biological treatment process that is required to  
7 be out of operation for at least 14 days in order to perform the  
8 reconstruction, or the unit is required to be out of operation for at  
9 least 14 days and, at the time of the reconstruction, the cost of  
10 reconstructing the unit exceeds 50 percent of the cost of replacing  
11 the wastewater treatment unit.

12 (ii) For the purposes of this section, “wastewater treatment unit”  
13 means a component of a wastewater treatment plant that performs  
14 a designated treatment function.

15 (2) (A) Except as provided in subparagraph (B), a violation of  
16 an effluent limitation where the waste discharge is in compliance  
17 with either a cease and desist order issued pursuant to Section  
18 13301 or a time schedule order issued pursuant to Section 13300,  
19 if all of the following requirements are met:

20 (i) The cease and desist order or time schedule order is issued  
21 after January 1, 1995, but not later than July 1, 2000, specifies the  
22 actions that the discharger is required to take in order to correct  
23 the violations that would otherwise be subject to subdivisions (h)  
24 and (i), and the date by which compliance is required to be achieved  
25 and, if the final date by which compliance is required to be  
26 achieved is later than one year from the effective date of the cease  
27 and desist order or time schedule order, specifies the interim  
28 requirements by which progress towards compliance will be  
29 measured and the date by which the discharger will be in  
30 compliance with each interim requirement.

31 (ii) The discharger has prepared and is implementing in a timely  
32 and proper manner, or is required by the regional board to prepare  
33 and implement, a pollution prevention plan that meets the  
34 requirements of Section 13263.3.

35 (iii) The discharger demonstrates that it has carried out all  
36 reasonable and immediately feasible actions to reduce  
37 noncompliance with the waste discharge requirements applicable  
38 to the waste discharge and the executive officer of the regional  
39 board concurs with the demonstration.

1 (B) Subdivisions (h) and (i) shall become applicable to a waste  
2 discharge on the date the waste discharge requirements applicable  
3 to the waste discharge are revised and reissued pursuant to Section  
4 13380, unless the regional board does all of the following on or  
5 before that date:

6 (i) Modifies the requirements of the cease and desist order or  
7 time schedule order as may be necessary to make it fully consistent  
8 with the reissued waste discharge requirements.

9 (ii) Establishes in the modified cease and desist order or time  
10 schedule order a date by which full compliance with the reissued  
11 waste discharge requirements shall be achieved. For the purposes  
12 of this subdivision, the regional board may not establish this date  
13 later than five years from the date the waste discharge requirements  
14 were required to be reviewed pursuant to Section 13380. If the  
15 reissued waste discharge requirements do not add new effluent  
16 limitations or do not include effluent limitations that are more  
17 stringent than those in the original waste discharge requirements,  
18 the date shall be the same as the final date for compliance in the  
19 original cease and desist order or time schedule order or five years  
20 from the date that the waste discharge requirements were required  
21 to be reviewed pursuant to Section 13380, whichever is earlier.

22 (iii) Determines that the pollution prevention plan required by  
23 clause (ii) of subparagraph (A) is in compliance with the  
24 requirements of Section 13263.3 and that the discharger is  
25 implementing the pollution prevention plan in a timely and proper  
26 manner.

27 (3) A violation of an effluent limitation where the waste  
28 discharge is in compliance with either a cease and desist order  
29 issued pursuant to Section 13301 or a time schedule order issued  
30 pursuant to Section 13300 or 13308, if all of the following  
31 requirements are met:

32 (A) The cease and desist order or time schedule order is issued  
33 on or after July 1, 2000, and specifies the actions that the discharger  
34 is required to take in order to correct the violations that would  
35 otherwise be subject to subdivisions (h) and (i).

36 (B) The regional board finds that, for one of the following  
37 reasons, the discharger is not able to consistently comply with one  
38 or more of the effluent limitations established in the waste  
39 discharge requirements applicable to the waste discharge:

1 (i) The effluent limitation is a new, more stringent, or modified  
2 regulatory requirement that has become applicable to the waste  
3 discharge after the effective date of the waste discharge  
4 requirements and after July 1, 2000, new or modified control  
5 measures are necessary in order to comply with the effluent  
6 limitation, and the new or modified control measures cannot be  
7 designed, installed, and put into operation within 30 calendar days.

8 (ii) New methods for detecting or measuring a pollutant in the  
9 waste discharge demonstrate that new or modified control measures  
10 are necessary in order to comply with the effluent limitation and  
11 the new or modified control measures cannot be designed, installed,  
12 and put into operation within 30 calendar days.

13 (iii) Unanticipated changes in the quality of the municipal or  
14 industrial water supply available to the discharger are the cause  
15 of unavoidable changes in the composition of the waste discharge,  
16 the changes in the composition of the waste discharge are the cause  
17 of the inability to comply with the effluent limitation, no alternative  
18 water supply is reasonably available to the discharger, and new or  
19 modified measures to control the composition of the waste  
20 discharge cannot be designed, installed, and put into operation  
21 within 30 calendar days.

22 (iv) The discharger is a publicly owned treatment works located  
23 in Orange County that is unable to meet effluent limitations for  
24 biological oxygen demand, suspended solids, or both, because the  
25 publicly owned treatment works meets all of the following criteria:

26 (I) Was previously operating under modified secondary  
27 treatment requirements pursuant to Section 301(h) of the Clean  
28 Water Act (33 U.S.C. Sec. 1311(h)).

29 (II) Did vote on July 17, 2002, not to apply for a renewal of the  
30 modified secondary treatment requirements.

31 (III) Is in the process of upgrading its treatment facilities to  
32 meet the secondary treatment standards required by Section  
33 301(b)(1)(B) of the Clean Water Act (33 U.S.C. Sec.  
34 1311(b)(1)(B)).

35 (C) The regional board establishes a time schedule for bringing  
36 the waste discharge into compliance with the effluent limitation  
37 that is as short as possible, taking into account the technological,  
38 operational, and economic factors that affect the design,  
39 development, and implementation of the control measures that are  
40 necessary to comply with the effluent limitation. For the purposes



1 of this subdivision, the time schedule ~~may shall~~ not exceed ~~five~~  
2 ~~10~~ years in length, ~~except that the time schedule may not exceed~~  
3 ~~10 years in length for the upgrade described in subclause (III) of~~  
4 ~~clause (iv) of subparagraph (B).~~ If the time schedule exceeds one  
5 year from the effective date of the order, the schedule shall include  
6 interim requirements and the dates for their achievement. The  
7 interim requirements shall include both of the following:

8 (i) Effluent limitations for the pollutant or pollutants of concern.

9 (ii) Actions and milestones leading to compliance with the  
10 effluent limitation.

11 (D) The discharger has prepared and is implementing in a timely  
12 and proper manner, or is required by the regional board to prepare  
13 and implement, a pollution prevention plan pursuant to Section  
14 13263.3.

15 *(4) A violation for a failure to file a discharge monitoring report*  
16 *for which the state board or a regional board does not inform the*  
17 *discharger of the alleged violation within 90 days of the date on*  
18 *which the discharge monitoring report was required to be filed.*

19 *(5) A violation that consists of a failure to file a discharge*  
20 *monitoring report for any period in which no discharge occurred.*

21 *(6) A violation that consists of a failure to file a discharge*  
22 *monitoring report for any period in which discharges do not violate*  
23 *effluent limitations contained in waste discharge requirements*  
24 *that include numeric effluent limitations.*

25 (k) (1) In lieu of assessing all or a portion of the mandatory  
26 minimum penalties pursuant to subdivisions (h) and (i) against a  
27 publicly owned treatment works serving a small community, the  
28 state board or the regional board may elect to require the publicly  
29 owned treatment works to spend an equivalent amount towards  
30 the completion of a compliance project proposed by the publicly  
31 owned treatment works, if the state board or the regional board  
32 finds all of the following:

33 (A) The compliance project is designed to correct the violations  
34 within five years.

35 (B) The compliance project is in accordance with the  
36 enforcement policy of the state board, excluding any provision in  
37 the policy that is inconsistent with this section.

38 (C) The publicly owned treatment works has prepared a  
39 financing plan to complete the compliance project.

(2) For the purposes of this subdivision, “a publicly owned treatment works serving a small community” means a publicly owned treatment works serving a population of ~~10,000~~ 20,000 persons or fewer or a rural county, with a financial hardship as determined by the state board after considering such factors as median income of the residents, rate of unemployment, or low population density in the service area of the publicly owned treatment works.

(l) (1) In lieu of assessing penalties pursuant to subdivision (h) or (i), the state board or the regional board, with the concurrence of the discharger, may direct a portion of the penalty amount to be expended on a supplemental environmental project in accordance with the enforcement policy of the state board. If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that may be directed to be expended on a supplemental environmental project may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000).

(2) For the purposes of this section, a “supplemental environmental project” means an environmentally beneficial project that a person agrees to undertake, with the approval of the regional board, that would not be undertaken in the absence of an enforcement action under this section.

(3) This subdivision applies to the imposition of penalties pursuant to subdivision (h) or (i) on or after January 1, 2003, without regard to the date on which the violation occurs.

(m) The Attorney General, upon request of a regional board or the state board, shall petition the appropriate court to collect any liability or penalty imposed pursuant to this section. Any person who fails to pay on a timely basis any liability or penalty imposed under this section shall be required to pay, in addition to that liability or penalty, interest, attorney’s fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which the failure to pay persists. The nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of the person’s penalty and nonpayment penalties that are unpaid as of the beginning of the quarter.

(n) (1) Subject to paragraph (2), funds collected pursuant to this section shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(2) (A) Notwithstanding any other provision of law, moneys collected for a violation of a water quality certification in accordance with paragraph (2) of subdivision (a) or for a violation of Section 401 of the Clean Water Act (33 U.S.C. Sec. 1341) in accordance with paragraph (5) of subdivision (a) shall be deposited in the Waste Discharge Permit Fund and separately accounted for in that fund.

(B) The funds described in subparagraph (A) shall be expended by the state board, upon appropriation by the Legislature, to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, in cleaning up or abating the effects of the waste on waters of the state or for the purposes authorized in Section 13443.

(o) The state board shall continuously report and update information on its Internet Web site, but at a minimum, annually on or before January 1, regarding its enforcement activities. The information shall include all of the following:

(1) A compilation of the number of violations of waste discharge requirements in the previous calendar year, including stormwater enforcement violations.

(2) A record of the formal and informal compliance and enforcement actions taken for each violation, including stormwater enforcement actions.

(3) An analysis of the effectiveness of current enforcement policies, including mandatory minimum penalties.

(p) The amendments made to subdivisions (f), (h), (i) and (j) during the second year of the 2001–02 Regular Session apply only to violations that occur on or after January 1, 2003.

*(q) The amendments made to this section by this act during the second year of the 2009–10 Regular Session of the Legislature apply to violations without regard to the date on which the violations occurred or occur.*

SEC. 2. Section 13385.1 of the Water Code is amended to read:  
13385.1. (a) (1) For the purposes of subdivision (h) of Section 13385, a “serious violation” also means a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain

1 effluent limitations. *This paragraph applies only to violations that*  
2 *occur on or after January 1, 2004.*

3 (2) *For the purposes of paragraph (1), a discharge monitoring*  
4 *report required pursuant to Section 13383 is not designed to ensure*  
5 *compliance with effluent limitations contained in waste discharge*  
6 *requirements if no discharges occur during the applicable*  
7 *reporting period.*

8 (b) *For the purposes of subdivision (h) of Section 13385, a*  
9 *“serious violation” does not include the failure to file a discharge*  
10 *monitoring report required pursuant to Section 13383 if during*  
11 *the period covered by the discharge monitoring report, the*  
12 *discharge or discharges do not violate effluent limitations*  
13 *contained in waste discharge requirements that include numeric*  
14 *waste discharge requirements. In that event, the failure to file the*  
15 *discharge monitoring report is subject to penalties in accordance*  
16 *with subdivision (e) of Section 13385.*

17 ~~(2) Paragraph (1) applies only to violations that occur on or~~  
18 ~~after January 1, 2004.~~

19 ~~(b)~~

20 (c) (1) Notwithstanding any other provision of law, moneys  
21 collected pursuant to this section for a failure to timely file a report,  
22 as described in subdivision (a), shall be deposited in the State  
23 Water Pollution Cleanup and Abatement Account.

24 (2) Notwithstanding Section 13340 of the Government Code,  
25 the funds described in paragraph (1) are continuously appropriated,  
26 without regard to fiscal years, to the state board for expenditure  
27 by the state board to assist regional boards, and other public  
28 agencies with authority to clean up waste or abate the effects of  
29 the waste, in responding to significant water pollution problems.

30 ~~(e)~~

31 (d) For the purposes of this section, paragraph (2) of subdivision  
32 (f) of Section 13385, and subdivisions (h), (i), and (j) of Section  
33 13385 only, “effluent limitation” means a numeric restriction or  
34 a numerically expressed narrative restriction, on the quantity,  
35 discharge rate, concentration, or toxicity units of a pollutant or  
36 pollutants that may be discharged from an authorized location. An  
37 effluent limitation may be final or interim, and may be expressed  
38 as a prohibition. An effluent limitation, for those purposes, does  
39 not include a receiving water limitation, a compliance schedule,  
40 or a best management practice.

1     *(e) The amendments made to this section by this act during the*  
2     *second year of the 2009–10 Regular Session of the Legislature*  
3     *apply to violations without regard to the date on which the*  
4     *violations occurred or occur.*

O